



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**WAGGONER CARR  
ATTORNEY GENERAL**

December 9, 1966

Honorable Coke R. Stevenson, Jr.    Opinion No. C-787

Administrator

Texas Liquor Control Board

Austin, Texas

Re: Whether the terms "convicted", "conviction", or "finally convicted" as used in the cited provisions of the Texas Liquor Control Act, mean and include a conviction where the sentence is probated under the terms of Art. 42.12 or Art. 42.13 of the Code of Criminal Procedure.

Dear Mr. Stevenson:

Your letter requesting an opinion of this office reads as follows:

"Section 11, (1) of Article I of the Texas Liquor Control Act provides as follows:

'Section 11. The Board or Administrator may refuse to issue a permit . . . to any applicant . . . if it has reasonable grounds to believe and finds any of the following to be true: (1). That the applicant has been convicted in a court of competent jurisdiction for a violation of any provision of this Act during the two (2) years next preceding the filing of his application, or that two (2) years has not elapsed since the termination of any sentence, by pardon or otherwise, imposed upon the applicant upon conviction for a felony. . . .'

"Section 12, (1), (24) and (29) of Article I of the Texas Liquor Control Act provides as follows:

'Section 12. The Board or Administrator may cancel . . . any permit . . . if it is found that any of the following is true: (1). That the permittee has at any time been convicted for a violation of any provision of this Act. . . . (24). That the permittee has been finally convicted of a felony during the period he is the holder of any permit or renewal thereof. . . . (29). In addition to the causes for cancellation or suspension hereinbefore set out, the Board or Administrator may cancel or suspend the permit of any person upon satisfactory proof that the permittee has been finally convicted of any penal provision of this Act. . . .'

"Section 17, (30) of Article I of the Texas Liquor Control Act provides as follows:

'Section 17. . . . (30) If any person, while holding a permit, shall be finally convicted of a felony, the Board or Administrator may cancel any permits held by such person upon satisfactory proof of such conviction. . . .'

"Section 5, 2 (f) of Article II of the Texas Liquor Control Act provides as follows:

'Section 5. . . . The County Judge shall refuse to approve the application for such license if he has reasonable grounds to believe and finds any of the following to be true: . . . 2. If a Distributor or Retailer: . . . (f). That the applicant has been finally convicted of a felony during the two (2) years next preceding the filing of his application; . . .'

"Section 5, 3, (a) and (b) of Article II of the Texas Liquor Control Act provides as follows:

'Section 5. . . . 3. The County Judge may refuse to issue a Distributor's or Retailer's license to any applicant if he has reasonable grounds to believe and finds any of the following to be true: (a). That the applicant has been finally convicted in a court of competent jurisdiction for the violation of any provision of this Act during the two (2) years next preceding the filing of his application; or, (b). That two (2) years has not elapsed since the termination, by pardon or otherwise, of any sentence imposed upon conviction for a felony; . . . '

"Section 19, A, (25) and (29) of Article II of the Texas Liquor Control Act provides as follows:

'Section 19: The Board or Administrator may cancel . . . , any license . . . , upon finding that the licensee has: A. If a Retail Dealer's Off-Premise License or a Retail Dealer's On-Premise License: . . . (25). Has been finally convicted of a felony during the period he is the holder of any license or any renewal thereof; . . . (29). Has been finally convicted for the violation of any penal provisions of this Act; . . . '

"Section 19, B, (16) and (17) of Article II of the Texas Liquor Control Act provides as follows:

'Section 19. The Board or Administrator may cancel . . . , any license . . . , upon finding that the licensee has: B. If a General Distributor's License, Local Distributor's License or a Branch Distributor's License: . . . (16). Has been finally

convicted of a felony during the period he is the holder of any license or any renewal thereof; or (17). Has been finally convicted for the violation of any penal provisions of this Act. . . .'

"Our question is do the terms 'convicted,' 'conviction,' or 'finally convicted' as used in the above quoted provisions of the Texas Liquor Control Act mean and include a conviction where the sentence is probated under the terms of Article 42.12 or Article 42.13 of the Code of Criminal Procedure of the State of Texas?"

Article 42.12, Vernon's Code of Criminal Procedure, authorizes, under certain circumstances, the suspension of sentence and placing on probation of a defendant convicted of a felony. Article 42.12, A, Section 1(b), defines "probation" as follows:

"b. 'Probation' shall mean the release of a convicted defendant by a court under conditions imposed by the court for a specified period during which the imposition of sentence is suspended; . . ."

Article 42.12 B, Section 3, provides as follows:

"Sec. 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court."

Section 7 of Article 42.12 provides:

"At any time, after the defendant has satisfactorily completed one-third of the original probationary period or two years of probation, whichever is the lesser, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the court should the defendant again be convicted of any criminal offense."

Section 8 of Article 42.12 provides in part:

"At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. Thereupon, the court shall cause the

defendant to be brought before it and after a hearing without a jury, may either continue or revoke the probation and, if probation is revoked, shall proceed to dispose of the case as if there had been no probation."

It is apparent, from a reading of Sections 7 and 8 cited immediately above, that the framers of the Adult Probation Law did not intend that a conviction be final where the sentence is probated unless and until the probation is revoked.

Analysis of the Texas Liquor Act indicates that the Legislature used the words "convicted," "conviction" and "finally convicted" interchangeably and did not intend to attach a separate or distinct legal meaning to the use of any one of the words.

This opinion will not address itself to the question presented by Article I, Section 11(2) and Article II, Section 5, 3(b) since these provisions are not pertinent to your question as it would not arise under the terms of Article 42.12 or Article 42.13 of Vernon's Code of Criminal Procedure.

Therefore, it is the opinion of this office that since the words "convicted," "conviction" and "finally convicted" as used in the Texas Liquor Control Act refer to a final conviction, there is no automatic suspension of a liquor license when there is a conviction and the sentence is probated under the terms of Article 42.12 unless and until the probation is revoked and the court enters judgment on the finding of guilty in accordance with the terms of Article 42.12, Section 8.

Article 42.13, Vernon's Code of Criminal Procedure, governs the placing of a defendant on probation in a misdemeanor case. Section 4 of said Article provides:

"Sec. 4. (a) When a defendant is granted probation under the terms of this Act, the finding of guilt does not become final, nor may the court render judgment thereon, except as provided in Section 6 of this Article.

"(b) The court shall record the fact and date that probation was granted on the docket sheet or in the minutes of the court. The court shall also note the period and terms of the probation, and the details of the

judgment. The court's records may not reflect a final conviction, however, unless probation is later revoked in accordance with Section 6 of this Article."

Article 42.13, Section 6, provides:

"Sec. 6. (a) If a probationer violates any term of his probation, the court may cause his arrest by warrant as in other cases. The probationer upon arrest shall be brought promptly before the court causing his arrest and the court, upon motion of the state and after a hearing without a jury, may continue, modify, or revoke the probation as the evidence warrants.

"(b) On the date the probation is revoked, the finding of guilty becomes final and the court shall render judgment thereon against the defendant. The judgment shall be enforced as in other cases and the time served on probation may not be credited or otherwise considered for any purpose."

Since Article 42.13 makes no reference to the suspension of sentence in misdemeanor cases when probation has been granted, and furthermore, since Section 4 of said Article precludes the court from even entering judgment upon a finding of guilty except in the event probation is revoked as provided in Section 6 of that Article, it is the opinion of this office that the words "convicted," "conviction," and "finally convicted" as used in the Texas Liquor Control Act do not include a conviction where the defendant is placed on probation after being found guilty of a misdemeanor offense unless and until the probation is revoked as provided in Article 42.13, Section 6, Vernon's Code of Criminal Procedure.

#### S U M M A R Y

It is the opinion of this office that the terms "convicted," "conviction," or "finally convicted" as used in the Texas Liquor Control Act do not include a conviction where the sentence is probated under the terms of Article

Honorable Coke R. Stevenson, Jr., Page 8 (C-787)

42.12, V.C.C.P. (felony conviction), or  
Article 42.13, V.C.C.P. (misdemeanor con-  
viction), unless and until probation is  
revoked and the court enters judgment on  
the finding of guilty.

Yours very truly,

WAGGONER CARR  
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DHC/dt

APPROVED

OPINION COMMITTEE:

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